

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1010

Citations Affected: IC 22-13-2-1.5; IC 23-14-75; IC 32-24; IC 36-7.

Synopsis: Eminent domain. Requires a condemnor, before proceeding to acquire property by use of eminent domain, to: (1) establish a proposed purchase price; (2) provide the owner with an appraisal or other evidence used to establish the proposed purchase price; and (3) conduct a good faith negotiation with the owner of the property. Requires a condemnor, except the department of transportation (department), certain utilities, and certain other persons, to proceed to acquire the property by use of eminent domain not more than two years after the condemnor submits a written acquisition offer to the owner of the property. Requires the department, certain utilities, and certain other persons to initiate eminent domain proceedings not more than six years after the department, utility, or other person submits a written acquisition offer to the property owner. Provides that if a condemnor fails to: (1) take possession of property the condemnor acquired through the use of eminent domain; and (2) adapt the property for the purpose for which it was acquired; not later than six years after the payment of the award or judgment for damages occurs, the condemnor forfeits all rights in the property as if the procedure to take the property had not begun. Provides that a property owner may receive litigation expenses, including reasonable attorney's fees, in an amount not to exceed the lesser of: (1) \$25,000; or (2) the fair market value of the property; if the property owner is awarded greater compensation at trial than was offered in the most recent settlement offer. Specifies that certain persons authorized to exercise eminent domain may do so only to accomplish the essential delivery of services. Establishes procedures for using eminent domain to transfer ownership or control of real property between private persons for uses that are not public uses, including: (1) limiting the use of eminent domain only to certain types of property; (2) requiring that the acquisition of the property will accomplish more than only increasing the property tax base of a government entity; (3) requiring mediation under certain circumstances; (4) requiring the payment of more than the fair market value of certain types of property; (5) requiring the condemnor to pay the attorney's fees of certain owners; and (6) requiring the payment of certain other damages, if applicable, including business losses. Prohibits a state agency or political subdivision from requiring that a lawfully erected sign be removed or altered as a condition of issuing a permit, license, variance, or other order concerning land use development unless the sign owner is compensated or has waived compensation in writing. Prohibits libraries from exercising eminent domain unless a specified legislative body in the library district adopts a resolution specifically approving the use of eminent domain for a particular purpose. Prohibits a privately owned cemetery from exercising eminent domain. Makes other changes and conforming amendments. **(This conference**

committee report does the following: (1) Makes all SECTIONS of the bill effective upon passage. (2) Provides that a property owner in an eminent domain proceeding may receive attorney's fees equal to the lesser of \$25,000 or the fair market value of the property if the property owner is awarded greater compensation at trial than was offered in the most recent settlement offer. (3) Provides that the restrictions on real property acquired through using eminent domain to transfer ownership or control of the property between private persons for uses that are not public uses expire 30 years after the acquisition of the real property instead of 20 years after the acquisition.)

Effective: Upon passage.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1010 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 22-13-2-1.5 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]: **Sec. 1.5. A state agency or political subdivision**
- 5 **may not require that a lawfully erected sign be removed or altered**
- 6 **as a condition of issuing:**
- 7 (1) a permit;
- 8 (2) a license;
- 9 (3) a variance; or
- 10 (4) any other order concerning land use or development;
- 11 **unless the owner of the sign is compensated in accordance with**
- 12 **IC 32-24 or has waived the right to and receipt of damages in**
- 13 **writing.**
- 14 SECTION 2. IC 23-14-60-1 IS AMENDED TO READ AS
- 15 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) If:
- 16 (1) any number of persons have:
- 17 (A) acted together as an association or corporation;
- 18 (B) acquired, as an association or corporation, land for cemetery
- 19 purposes;
- 20 (C) sold and granted to persons the right to bury the dead in lots
- 21 located on the land; and
- 22 (D) actually managed and controlled the land as a cemetery for
- 23 at least thirty (30) years; but

(2) the organization that the persons attempted to establish as a corporation or cemetery association is defective and incomplete because of a failure to comply with the formalities required by law in force at some time since the original parties first assumed to act as an association or corporation;

the owners of the right to bury the dead on lots in the cemetery and those who may acquire the right become and continue to be a cemetery association or corporation from March 14, 1913.

(b) The owners of the right to bury the dead on lots in a cemetery referred to in subsection (a) have all the rights and powers of a cemetery association or corporation organized under this article, IC 23-1, or IC 23-17. ~~including the power of eminent domain under IC 32-24-1.~~

SECTION 3. IC 23-14-75-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter applies to ~~the following~~:

~~(1) A:~~

~~(A) city;~~

~~(B) town;~~

~~(C) township;~~

~~(D) corporation or association; or~~

~~(E) another owner;~~

~~that owns or controls a public cemetery that has been in existence for at least thirty (30) years.~~

~~(2) A:~~

~~(A) city, town, or township; or~~

~~(B) corporation or association~~ **a city, town, or township** that:

(1) owns a cemetery that has been in existence for at least thirty (30) years; or

that (2) desires to own a public cemetery.

SECTION 4. IC 23-14-75-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. If land has not been appropriated or set apart by the owners by platting for a public cemetery and it is necessary to purchase real estate for the cemetery:

(1) the legislative body of the city or town; **or**

(2) the executive of the township;

~~(3) the trustees or directors of the corporation or association; or~~

~~(4) the other owners;~~

have has the power of eminent domain to condemn and appropriate the land for cemetery purposes under proceedings provided by statute.

SECTION 5. IC 32-24-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Before proceeding to condemn, the person:

(1) may enter upon any land to examine and survey the property sought to be acquired; and

(2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) The effort to purchase under subsection (b)(2) must include

the following:

- (1) Establishing a proposed purchase price for the property.
- (2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.
- (3) Conducting good faith negotiations with the owner of the property.

~~(c)~~ (d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

~~(d)~~ (e) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

~~(e)~~ (f) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired. ~~if the property is taken for any purpose other than a right-of-way.~~

SECTION 6. IC 32-24-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As a condition precedent to filing a complaint in condemnation, and except for an action brought under IC 8-1-13-19 (repealed), a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the property in the form prescribed in subsection (c). The offer must be served personally or by certified mail upon:

- (1) the owner of the property sought to be acquired; or
- (2) the owner's designated representative.

(b) If the offer cannot be served personally or by certified mail, or if the owner or the owner's designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the property is located or in the county where the owner was last known to reside. The notice must be in the following form:

NOTICE

TO: _____, _____ (owner(s)),
 _____ (condemnor) needs your property for
 a _____ (description
 of project), and will need to acquire the following from you:
 _____ (general
 description of the property to be acquired). We have made you a formal
 offer for this property that is now on file in the Clerk's Office in the
 _____ County Court House. Please pick up the offer. If you do not
 respond to this notice or accept the offer by _____ (a date 30 days from
 1st date of publication) 20____, we shall file a suit to condemn the
 property.

 Condemnor

The condemnor must file the offer with the clerk of the circuit court with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice as follows:

(1) One (1) notice immediately.

(2) A subsequent publication at least seven (7) days and not more than twenty-one (21) days after the publication under subdivision

(1).

(c) The offer to purchase must be in the following form:

UNIFORM PROPERTY OR EASEMENT

ACQUISITION OFFER

_____ (condemnor) is authorized by Indiana law to obtain your property or an easement across your property for certain public purposes. _____ (condemnor) needs (your property) (an easement across your property) for a _____

(brief description of the project) and needs to take _____ (legal description of the property or easement to be taken; the legal description may be made on a separate sheet and attached to this document if additional space is required)

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is \$ _____, and, therefore, _____ (condemnor) offers you \$ _____ for the above described (property) (easement). You have ~~twenty-five (25)~~ **thirty (30)** days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, _____ (condemnor) is required to make a good faith effort to purchase (your property) (an easement across your property).

2. You do not have to accept this offer **and** _____ **(condemnor) is not required to agree to your demands.**

3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), _____ (condemnor) has the right to file suit to condemn and acquire the (property) (easement) in the county in which the property is located.

4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.

5. You may object to the public purpose and necessity of this project.

6. If _____ (condemnor) files a suit to condemn and acquire (your property) (an easement) and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the (property) (easement) to be acquired.

7. If we both agree with the court appraisers' report, then the matter

is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to decide what should be paid to you for the (property) (easement) condemned.

8. If the court appraisers' report is not accepted by either of us, then _____ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, _____ (condemnor) is legally entitled to immediate possession of the (property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.

9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice. (The condemnor may insert here any other information pertinent to this offer or required by circumstances or law).

10. If you have any questions concerning this matter you may contact us at:

(full name, mailing and street address, and phone of the condemnor)

This offer was made to the owner(s):

_____ of _____,
_____ of _____,
_____ of _____,
_____ of _____,

on the _____ day of _____ 20____,

BY:

(signature)

(printed name and title)

Agent of:

(condemnor)

If you decide to accept the offer of \$ _____ made by _____ (condemnor) sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

ACCEPTANCE OF OFFER

I (We), _____, _____, _____,
owner(s) of the above described property or interest in property,

hereby accept the offer of \$ _____ made by _____
 (condemnor) on this _____ day of _____, 20____.

NOTARY'S CERTIFICATE

STATE OF _____)
)SS:
 COUNTY OF _____)

Subscribed and sworn to before me this _____ day of
 _____, 20____.

My Commission Expires: _____

 (Signature)

 (Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored.

SECTION 7. IC 32-24-1-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. (a) Except as provided in sections 5.8 and 5.9 of this chapter, this section applies to every person that may exercise the power of eminent domain.**

(b) If:

(1) a person that may exercise the power of eminent domain submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than two (2) years after the date the person submitted the written acquisition offer to the owner.

(c) If a person that may exercise the power of eminent domain fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least three (3) years after the date the two (2) year period described in subsection (b) expires.

SECTION 8. IC 32-24-1-5.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.8. (a) This section applies only to:**

(1) the Indiana department of transportation when the department seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a:

(A) state highway; or

(B) toll road project or toll bridge; and

(2) any other person that may exercise the power of eminent domain when the person seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a feeder road for an Indiana department of transportation project described in subdivision (1) if the construction, reconstruction, improvement, maintenance, or repair of the feeder road begins not later than five (5) years from the conclusion of the project.

(b) If:

(1) the Indiana department of transportation or other person described in subsection (a)(2) submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the department or other person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than six (6) years after the date the department or other person submitted the written acquisition offer to the owner.

(c) If the Indiana department of transportation or other person fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the department or other person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same or a substantially similar project for at least three (3) years after the date the six (6) year period described in subsection (b) expires.

SECTION 9. IC 32-24-1-5.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.9. (a) As used in this section, "public utility" means a public utility, municipally owned utility, cooperatively owned utility, joint agency created under IC 8-1-2.2, municipal sanitation department operating under IC 36-9-23, sanitary district operating under IC 36-9-25, or an agency operating as a stormwater utility.

(b) This section applies only to a public utility or pipeline company.

(c) If:

(1) a public utility or pipeline company submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer in writing;

the public utility or pipeline company, to acquire the parcel by the exercise of eminent domain, must file a complaint under this article not more than six (6) years after the date on which the public utility or pipeline company submitted the written acquisition offer to the owner.

(d) If a public utility or pipeline company fails to meet the requirements set forth in subsection (c) concerning a parcel of real estate, the public utility or pipeline company may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least two (2) years after the date on which the six (6) year period described in subsection (c) expires.

SECTION 10. IC 32-24-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A defendant may object to the proceedings:

- (1) because the court does not have jurisdiction either of the subject matter or of the person;
- (2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or
- (3) for any other reason disclosed in the complaint or set up in the objections.

(b) Objections under subsection (a) must be:

- (1) in writing;
- (2) separately stated and numbered; and
- (3) filed not later than ~~the first appearance of~~ **thirty (30) days after the date the notice required in section 6 of this chapter is served on the defendant. However, the court may extend the period for filing objections by not more than thirty (30) days upon written motion of the defendant.**

(c) The court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for in section 11 of this chapter. However, the court may permit amendments to the pleadings.

(d) If an objection is sustained, the plaintiff may amend the complaint or may appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions upon filing with the circuit court clerk a bond:

- (1) with the penalty that the court fixes;
- (2) with sufficient surety;
- (3) payable to the plaintiff; and
- (4) conditioned for the diligent prosecution of the appeal and for the payment of the judgment and costs that may be affirmed and adjudged against the appellants.

The appeal bond must be filed not later than ten (10) days after the appointment of the appraisers.

(f) All the parties shall take notice of and be bound by the judgment in the appeal.

(g) The transcript must be filed in the office of the clerk of the supreme court not later than thirty (30) days after the filing of the appeal bond. The appeal does not stay proceedings in the cause.

SECTION 11. IC 32-24-1-12 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) Not later than ~~ten (10)~~ **forty-five (45)** days before a trial involving the issue of damages, the plaintiff shall, and a defendant may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 14 of this chapter.

(d) This section does not limit or restrict the right of a defendant to payment of any amounts authorized by law in addition to damages for the property taken from the defendant.

(e) This section does not apply to an action brought under IC 8-1-13-19 (repealed).

SECTION 12. IC 32-24-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) Except as provided in subsection (b), the plaintiff shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 12 of this chapter, the court shall allow the defendant the defendant's litigation expenses, **including reasonable attorney's fees**, in an amount not to exceed ~~two thousand five hundred dollars (\$2,500)~~ **the lesser of:**

(1) twenty-five thousand dollars (\$25,000); or

(2) the fair market value of the defendant's property or easement as determined under this chapter.

SECTION 13. IC 32-24-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) If the person seeking to take property under this article fails:

(1) to pay the assessed damages **and, if applicable, the attorney's fees payable under section 14 of this chapter** not later than one (1) year after the appraisers' report is filed, if exceptions are not filed to the report;

(2) to pay:

(A) the damages assessed **and, if applicable, attorney's fees payable under section 14 of this chapter** if exceptions are filed to the appraisers' report and the exceptions are not sustained; or

(B) the damages assessed **and, if applicable, attorney's fees payable under section 14 of this chapter** and costs if

exceptions are filed to the appraisers' report and the exceptions are sustained;

not later than one (1) year after the entry of the judgment, if an appeal is not taken from the judgment;

(3) to pay the damages assessed **and, if applicable, attorney's fees payable under section 14 of this chapter** or the judgment rendered in the trial court not later than one (1) year after final judgment is entered in the appeal if an appeal is taken from the judgment of the trial court; or

(4) to take possession of the property and adapt the property for the purpose for which it was acquired not later than ~~five (5)~~ **six (6)** years after the payment of the award or judgment for damages, except where a fee simple interest in the property is authorized to be acquired and is acquired;

the person seeking to acquire the property forfeits all rights in the property as fully and completely as if the procedure to take the property had not begun.

(b) An action to declare a forfeiture under this section may be brought by any person having an interest in the property sought to be acquired, or the question of the forfeiture may be raised and determined by direct allegation in any subsequent proceedings, by any other person to acquire the property for a public use. In the subsequent proceedings the person seeking the previous acquisition or the person's proper representatives, successors, or assigns shall be made parties.

SECTION 14. IC 32-24-2-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 17. If applicable, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.**

SECTION 15. IC 32-24-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) After the appraisers file their report, any of the defendants may, within a reasonable time fixed by the court, file exceptions to the report, alleging that the appraisal of the property, as made by the appraisers, is not the true cash value of the property. If exceptions are filed, a trial on the exceptions shall be held by the court or before a jury, if asked by either party.

(b) The circuit court clerk shall give notice of filing of the appraisers' report to all known parties to the action and their attorneys of record by certified mail.

(c) Upon the trial of the exceptions, the court may revise, correct, amend, or confirm the appraisal in accordance with the finding of the court or verdict of the jury.

(d) The court shall apportion the costs accruing in the proceedings as justice may require. **However, if applicable, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.**

(e) Changes of venue may be had as in other cases.

SECTION 16. IC 32-24-4-1 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A person, firm, partnership, limited liability company, or corporation authorized to do business in Indiana and authorized to:

(1) furnish, supply, transmit, transport or distribute electrical energy, gas, oil, petroleum, water, heat, steam, hydraulic power, or communications by telegraph or telephone to the public or to any town or city; or

(2) construct, maintain or operate turnpikes, toll bridges, canals, public landings, wharves, ferries, dams, aqueducts, street railways, or interurban railways for the use of the public or for the use of any town or city;

may take, acquire, condemn, and appropriate land, real estate, or any interest in the land or real estate **to accomplish the essential delivery of services described in subdivisions (1) and (2).**

(b) A person described in subsection (a) has all accommodations, rights, and privileges necessary to accomplish the use for which the property is taken. A person acting under subsection (a) may use acquired, condemned, or appropriated land to construct railroad siding, switch, or industrial tracks connecting its plant or facilities with the tracks of any common carrier.

SECTION 17. IC 32-24-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 4.5. Procedures for Transferring Ownership or Control of Real Property Between Private Persons

Sec. 1. (a) As used in this section, "public use" means the:

(1) possession, occupation, and enjoyment of a parcel of real property by the general public or a public agency for the purpose of providing the general public with fundamental services, including the construction, maintenance, and reconstruction of highways, bridges, airports, ports, certified technology parks, intermodal facilities, and parks;

(2) leasing of a highway, bridge, airport, port, certified technology park, intermodal facility, or park by a public agency that retains ownership of the parcel by written lease with right of forfeiture; or

(3) use of a parcel of real property to create or operate a public utility, an energy utility (as defined in IC 8-1-2.5-2), or a pipeline company.

The term does not include the public benefit of economic development, including an increase in a tax base, tax revenues, employment, or general economic health.

(b) This chapter applies to a condemnor that exercises the power of eminent domain to acquire a parcel of real property:

(1) from a private person;

(2) with the intent of ultimately transferring ownership or control to another private person; and

(3) for a use that is not a public use.

(c) This chapter does not apply thirty (30) years after the acquisition of the real property.

Sec. 2. As used in this chapter, "condemnor" means a person

1 authorized to exercise the power of eminent domain.

2 Sec. 3. As used in this chapter, "parcel of real property" means
3 real property that:

- 4 (1) is under common ownership; and
- 5 (2) a condemnor is seeking to acquire.

6 Sec. 4. As used in this chapter, "private person" means a person
7 other than a public agency.

8 Sec. 5. (a) As used in this chapter, "public agency" means:

- 9 (1) a state agency (as defined in IC 4-13-1-1);
- 10 (2) a unit (as defined in IC 36-1-2-23);
- 11 (3) a body corporate and politic created by state statute;
- 12 (4) a school corporation (as defined in IC 20-26-2-4); or
- 13 (5) another governmental unit or district with eminent domain
14 powers.

15 (b) The term does not include a state educational institution (as
16 defined in IC 20-12-0.5-1).

17 Sec. 6. As used in this chapter, "relocation costs" means
18 relocation expenses payable in accordance with the federal
19 Uniform Relocation Assistance Act (42 U.S.C. 4601 through 42
20 U.S.C. 4655).

21 Sec. 7. A condemnor may acquire a parcel of real property by the
22 exercise of eminent domain under this chapter only if all the
23 following conditions are met:

24 (1) At least one (1) of the following conditions exists on the
25 parcel of real property:

26 (A) The parcel contains a structure that, because of:

- 27 (i) physical condition;
- 28 (ii) use; or
- 29 (iii) occupancy;

30 constitutes a public nuisance.

31 (B) The parcel contains a structure that is unfit for human
32 habitation or use because the structure:

- 33 (i) is dilapidated;
- 34 (ii) is unsanitary;
- 35 (iii) is unsafe;
- 36 (iv) is vermin infested; or
- 37 (v) does not contain the facilities or equipment required by
38 applicable building codes or housing codes.

39 (C) The parcel contains a structure that is:

- 40 (i) a fire hazard; or
- 41 (ii) otherwise dangerous to the safety of persons or
42 property.

43 (D) The parcel contains a structure that is not fit for its
44 intended use because:

- 45 (i) the utilities;
- 46 (ii) the sewerage;
- 47 (iii) the plumbing;
- 48 (iv) the heating; or
- 49 (v) any other similar services or facilities;

50 have been disconnected, destroyed, removed, or rendered
51 ineffective.

(E) The parcel:

- (i) is located in a substantially developed neighborhood;**
- (ii) is vacant or unimproved; and**
- (iii) because of neglect or lack of maintenance, has become a place for the accumulation of trash, garbage, or other debris or become infested by rodents or other vermin, and the neglect or lack of maintenance has not been corrected by the owner of the parcel within a reasonable time after the owner receives notice of the accumulation or infestation.**

(F) The parcel and any improvements on the parcel are the subject of tax delinquencies that exceed the assessed value of the parcel and its improvements.

(G) The parcel poses a threat to public health or safety because the parcel contains environmental contamination.

(H) The parcel has been abandoned.

(2) The acquisition of the parcel of real property through the exercise of eminent domain is expected to accomplish more than only increasing the property tax base of a government entity.

(3) If the owner files a request for mediation at the time the owner files an objection or exception to an eminent domain proceeding, the mediation occurs as follows:

(A) The court shall appoint a mediator not later than ten (10) days after the request for mediation is filed.

(B) The condemnor shall engage in good faith mediation with the owner, including the consideration of a reasonable alternative to the exercise of eminent domain.

(C) The mediation must be concluded not later than ninety (90) days after the appointment of the mediator.

(D) The condemnor shall pay the costs of the mediator.

A determination concerning whether a condition described in this section has been met is subject to judicial review in an eminent domain proceeding concerning the parcel of real property. If a court determines that an eminent domain proceeding brought under this chapter is unauthorized because the condemnor did not meet the conditions described in this section, the court shall order the condemnor to reimburse the owner for the owner's reasonable attorney's fees that the court finds were necessary to defend the action.

Sec. 8. Notwithstanding IC 32-24-1, a condemnor that acquires a parcel of real property through the exercise of eminent domain under this chapter shall compensate the owner of the parcel as follows:

(1) For agricultural land:

(A) either:

- (i) payment to the owner equal to one hundred twenty-five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1; or**
- (ii) upon the request of the owner and if the owner and condemnor both agree, transfer to the owner of an**

1 ownership interest in agricultural land that is equal in
2 acreage to the parcel acquired through the exercise of
3 eminent domain;

4 (B) payment of any other damages determined under
5 IC 32-24-1 and any loss incurred in a trade or business that
6 is attributable to the exercise of eminent domain; and

7 (C) payment of the owner's relocation costs, if any.

8 (2) For a parcel of real property occupied by the owner as a
9 residence:

10 (A) payment to the owner equal to one hundred fifty percent
11 (150%) of the fair market value of the parcel as determined
12 under IC 32-24-1;

13 (B) payment of any other damages determined under
14 IC 32-24-1 and any loss incurred in a trade or business that
15 is attributable to the exercise of eminent domain; and

16 (C) payment of the owner's relocation costs, if any.

17 (3) For a parcel of real property not described in subdivision
18 (1) or (2):

19 (A) payment to the owner equal to one hundred percent
20 (100%) of the fair market value of the parcel as determined
21 under IC 32-24-1;

22 (B) payment of any other damages determined under
23 IC 32-24-1 and any loss incurred in a trade or business that
24 is attributable to the exercise of eminent domain; and

25 (C) payment of the owner's relocation costs, if any.

26 Sec. 9. (a) Not later than forty-five (45) days before a trial
27 involving the issue of compensation, the condemnor shall, and an
28 owner may, file and serve on the other party an offer of settlement.
29 Not more than five (5) days after the date the offer of settlement is
30 served, the party served may respond by filing and serving upon
31 the other party an acceptance or a counter offer of settlement. The
32 offer must state that it is made under this section and specify the
33 amount, exclusive of interest and costs, that the party serving the
34 offer is willing to accept as just compensation and damages for the
35 property sought to be acquired. The offer or counter offer
36 supersedes any other offer previously made under this chapter by
37 the party.

38 (b) An offer of settlement is considered rejected unless an
39 acceptance in writing is filed and served on the party making the
40 offer before the trial on the issue of the amount of damages begins.

41 (c) If the offer is rejected, it may not be referred to for any
42 purpose at the trial but may be considered solely for the purpose
43 of awarding costs and litigation expenses under section 10 of this
44 chapter.

45 (d) This section does not limit or restrict the right of an owner to
46 payment of any amounts authorized by law in addition to damages
47 for the property taken from the owner.

48 Sec. 10. (a) Except as provided in subsection (b), the condemnor
49 shall pay the costs of the proceedings.

50 (b) If there is a trial, the additional costs caused by the trial shall
51 be paid as ordered by the court. However, if there is a trial and the

amount of damages awarded to the owner by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the condemnor under section 9 of this chapter, the court shall require the condemnor to pay the owner's litigation expenses, including reasonable attorney's fees, in an amount that does not exceed twenty-five percent (25%) of the cost of the acquisition.

Sec. 11. (a) This section applies to a parcel of real property located in a project area:

- (1) that is located in only one (1) county;
- (2) that is at least ten (10) acres in size; and
- (3) in which a condemnor or its agents has acquired clear title to at least ninety percent (90%) of the parcels in the project area.

(b) As used in this section, "project area" means an area designated by a condemnor and the legislative body for the condemnor for economic development.

(c) Notwithstanding sections 7 and 8 of this chapter, a condemnor may acquire a parcel of real property by the exercise of eminent domain under this section only if all of the following conditions are met:

- (1) The parcel of real property is not occupied by the owner of the parcel as a residence.
- (2) The legislative body for the condemnor adopts a resolution by a two-thirds (2/3) vote that authorizes the condemnor to exercise eminent domain over a particular parcel of real property.

(d) A condemnor that acquires a parcel of real property through the exercise of eminent domain under this section shall compensate the owner of the parcel as follows:

- (1) Payment to the owner equal to one hundred twenty five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1.
- (2) Payment of any other damages as determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain.
- (3) Payment of the owner's relocation costs, if any.

(e) The condemnor may not acquire a parcel of real property through the exercise of eminent domain under this section if the owner of the parcel demonstrates by clear and convincing evidence that:

- (1) the location of the parcel is essential to the viability of the owner's commercial activity; and
- (2) the payment of damages and relocation costs cannot adequately compensate the owner of the parcel.

(f) The court shall award the payment of reasonable attorney's fees to the owner of a parcel in accordance with this chapter.

SECTION 18. IC 32-24-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 7. Procedure for Libraries

1 **Sec. 1. This chapter applies to the exercise of eminent domain by**
 2 **a library board (as defined in IC 36-12-1-3). Notwithstanding any**
 3 **other law, a library board may exercise eminent domain only if it**
 4 **complies with this chapter.**

5 **Sec. 2. A library board may exercise eminent domain only if one**
 6 **(1) of the following legislative bodies adopts a resolution specifically**
 7 **authorizing the library board to exercise eminent domain over a**
 8 **particular parcel of land for a specific purpose:**

9 **(1) If the library district is located entirely within the corporate**
 10 **boundaries of a municipality, the legislative body of the**
 11 **municipality.**

12 **(2) If the library district:**

13 **(A) is not described by subdivision (1); and**

14 **(B) is located entirely within the boundaries of a township;**
 15 **the legislative body of the township.**

16 **(3) If the library district is not described by subdivision (1) or**
 17 **(2), the legislative body of each county in which the library**
 18 **district is located.**

19 **Sec. 3. The resolution described in section 2 of this chapter must**
 20 **specifically describe:**

21 **(1) the parcel of land that the library board seeks to acquire by**
 22 **exercising eminent domain;**

23 **(2) the purpose for which the parcel of land is to be acquired;**
 24 **and**

25 **(3) why the exercise of eminent domain is necessary to**
 26 **accomplish the library board's purpose.**

27 **SECTION 19. IC 36-7-2-5.5 IS ADDED TO THE INDIANA CODE**
 28 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 29 **UPON PASSAGE]: Sec. 5.5. A unit may not require that a lawfully**
 30 **erected sign be removed or altered as a condition of issuing:**

31 **(1) a permit;**

32 **(2) a license;**

33 **(3) a variance; or**

34 **(4) any other order concerning land use or development;**

35 **unless the owner of the sign is compensated in accordance with**
 36 **IC 32-24 or has waived the right to and receipt of damages in**
 37 **writing.**

38 **SECTION 20. IC 36-7-14-32.5 IS AMENDED TO READ AS**
 39 **FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 32.5. (a) The**
 40 **commission may acquire a parcel of real property by the exercise of**
 41 **eminent domain when the real property has all of the following**
 42 **characteristics:**

43 **(1) The real property is an unsafe building (as defined in**
 44 **IC 36-7-9-4) and is subject to an order issued under IC 36-7-9-5.**

45 **(2) The owner of the real property has not complied with the order**
 46 **issued under IC 36-7-9-5.**

47 **(3) The real property is not being used as a residence or for a**
 48 **business enterprise.**

49 **meets at least one (1) of the conditions described in**
 50 **IC 32-24-4.5-7(1).**

51 ~~(4)~~ **(2) The real property is capable of being developed or**

rehabilitated to provide affordable housing for low or moderate income families or to provide other development that will benefit or serve low or moderate income families.

~~(5)~~ (3) The ~~unsafe~~ condition of the real property has a negative impact on the use or value of the neighboring properties or other properties in the community.

(b) The commission or the commission's designated hearing examiner shall conduct a public meeting to determine whether a parcel of real property has the characteristics set forth in subsection (a). Each person holding a fee or life estate interest of record in the property must be given notice by first class mail of the time and date of the hearing at least ten (10) days before the hearing and is entitled to present evidence and make arguments at the hearing.

(c) If the commission considers it necessary to acquire real property under this section, the commission shall adopt a resolution setting out the commission's determination to exercise that power and directing the commission's attorney to file a petition in the name of the city on behalf of the department in the circuit or superior court with jurisdiction in the county.

(d) Eminent domain proceedings under this section are governed by IC 32-24.

(e) The commission shall use real property acquired under this section for one (1) of the following purposes:

(1) Sale in an urban homestead program under IC 36-7-17.

(2) Sale to a family whose income is at or below the county's median income for families.

(3) Sale or grant to a neighborhood development corporation with a condition in the granting clause of the deed requiring the nonprofit development corporation to lease or sell the property to a family whose income is at or below the county's median income for families or to cause development that will serve or benefit families whose income is at or below the unit's median income for families.

(4) Any other purpose appropriate under this chapter so long as it will serve or benefit families whose income is at or below the unit's median income for families.

(f) A neighborhood development corporation or nonprofit corporation that receives property under this section must agree to rehabilitate or otherwise develop the property in a manner that is similar to and consistent with the use of the other properties in the area served by the corporation.

SECTION 21. IC 36-7-15.1-22.5, AS AMENDED BY P.L.185-2005, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22.5. (a) The commission may acquire a parcel of real property by the exercise of eminent domain when the following conditions exist:

(1) The real property is an ~~unsafe premises (as defined in IC 36-7-9)~~ and is subject to an order issued under IC 36-7-9 or a notice of violation issued by the county's health and hospital corporation under its powers under IC 16-22-8.

~~(2) The real property is not being used as a residence or for a~~

business enterprise.

meets at least one (1) of the conditions described in IC 32-24-4.5-7(1).

~~(3)~~ (2) The real property is capable of being developed or rehabilitated to provide affordable housing for low or moderate income families or to provide other development that will benefit or serve low or moderate income families.

~~(4)~~ (3) The real property suffers from one (1) or more of the conditions listed in IC 36-7-1-3, resulting in a negative impact on the use or value of the neighboring properties or other properties in the community.

(b) The commission or its designated hearing examiner shall conduct a public meeting to determine whether the conditions set forth in subsection (a) exist relative to a parcel of real property. Each person holding a fee or life estate interest of record in the property must be given notice by first class mail of the time and date of the hearing at least ten (10) days before the hearing, and is entitled to present evidence and make arguments at the hearing.

(c) If the commission considers it necessary to acquire real property under this section, it shall adopt a resolution setting out its determination to exercise that power and directing its attorney to file a petition in the name of the city on behalf of the department in the circuit or superior court in the county.

(d) Eminent domain proceedings under this section are governed by IC 32-24.

(e) The commission shall use real property acquired under this section for one (1) of the following purposes:

(1) Sale in an urban homestead program under IC 36-7-17.

(2) Sale to a family whose income is at or below the county's median income for families.

(3) Sale or grant to a neighborhood development corporation or other nonprofit corporation, with a condition in the granting clause of the deed requiring the nonprofit organization to lease or sell the property to a family whose income is at or below the county's median income for families or to cause development that will serve or benefit families whose income is at or below the county's median income for families. However, a nonprofit organization is eligible for a sale or grant under this subdivision only if the county fiscal body has determined that the nonprofit organization meets the criteria established under subsection (f).

(4) Any other purpose appropriate under this chapter so long as it will serve or benefit families whose income is at or below the county's median income for families.

(f) The county fiscal body shall establish criteria for determining the eligibility of neighborhood development corporations and other nonprofit corporations for sales and grants of real property under subsection (e)(3). A neighborhood development corporation or other nonprofit corporation may apply to the county fiscal body for a determination concerning the corporation's compliance with the criteria established under this subsection.

(g) A neighborhood development corporation or nonprofit

1 corporation that receives property under this section must agree to
2 rehabilitate or otherwise develop the property in a manner that is
3 similar to and consistent with the use of the other properties in the area
4 served by the corporation.

5 SECTION 22. **An emergency is declared for this act.**
(Reference is to EHB 1010 as reprinted February 28, 2006.)

Conference Committee Report
on
Engrossed House Bill 1010

Signed by:

Representative Wolkins
Chairperson

Senator Bray

Representative Dvorak

Senator Sipes

House Conferees

Senate Conferees